

REMARKS/ARGUMENTS

Claims 1-13 and 15-27 are currently pending in this application. Claims 25-27 have been withdrawn from consideration.

Claims 1-9, 17-18, and 23-24 stand rejected under 35 U.S.C. § 103(a) as being obvious in light of U.S. Patent No. 5,698,213 to Jamiolkowski et al. The Examiner has asserted that the '213 patent teaches a polyoxaester used to produce hydrogels and medical devices, and that it that would be obvious to one of skill in the art to crosslink the polymer disclosed in the patent and to generate a drug delivery matrix therefrom. Applicants respectfully traverse this rejection.

The effective date of the Jamiolkowski reference is after the earliest effective filing date of the present invention. The present application claims priority to a provisional application filed on September 13, 1996, which supports the subject matter of the presently-rejected claims. The Jamiolkowski patent resulted from a continuation-in-part application that was filed on November 6, 1996. The content of the Jamiolkowski application related to hydrogels was added at this point, and was not present in any of the earlier filings; therefore, the earliest effective date for this disclosure is November 6, 1996. Because the Jamiolkowski is prior art only under § 102(e), it must have an effective date prior to September 13, 1996 to be properly citable. In light of the foregoing, Applicant respectfully submits that the Jamiolkowski patent is not properly citable against the present invention and respectfully requests reconsideration and withdrawal of all rejections relying on this reference.

Claims 1-13 and 15-24 have been rejected on the ground of non-statutory obviousness-type double patenting in light of U.S. Patent No. 6,258,351. To overcome this rejection, a terminal disclaimer in compliance with 37 CFR 1.321(c) is provided with this amendment. Applicant respectfully submits that this terminal disclaimer obviates the obviousness-type double patenting rejections for claims 1-13 and 15-24.

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Reply to Office Action of August 26, 2008
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It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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